IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12791 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVYAJYOTI TRUST SANCHALIT AURO NIKETAN HIGHER SECONDARY
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 12791 of 2004
MS MAMTA R VYAS for Petitioner No. 1
DS AFF.NOT FILED (N) for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 06/10/2004

ORAL JUDGEMENT

Rule. Shri Dipen Desai, Ld. AGP waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing

today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order dated 27.4.2004 passed by the respondent no.2 - Commissioner of Education and the order dated 19.5.2004 passed by the respondent no.4 District Education Officer.

3. Ms.Mamta Vyas, Learned Advocate for the petitioner has submitted that before passing the impugned order dated 27.4.2004, no opportunity of hearing has been given to the petitioner and straightway, the impugned order has been passed without regard to reduction of 100% grant and the order with regard to reduction of 100% grant and the order with regard to recovery of grant is passed.

4. In response to the notice issued by this Court and on advance copy, Shri Dipen Desai, Ld. AGP has appeared. He has submitted that in fact, under Rule 95 of Grant in Aid Code, 1964, the order with regard to reduction of grant can be passed without hearing. However, the respondent no.2 will give an opportunity of being heard to the petitioner and pass an appropriate order. It is also agreed between the parties that the documents which will be relied upon by the Commissioner, the inspection of those documents will be given to the representative of the petitioner on the earlier day of hearing. In that view of the matter and in view of the fact that the impugned order dated 27.4.2004 is passed in violation of the principles of natural justice and without giving an opportunity to the petitioner, the order dated 27.4.2004 passed by the respondent no.2 Commissioner of Higher Education as well as consequently the order passed by the District Education Officer dated 19.5.2004 are hereby quashed and set aside. The matter is remanded to the respondent no.2 - Commissioner for Higher Education for deciding the same afresh after giving an opportunity to the petitioner and to give the inspection of the documents which are to be relied upon by the Commissioner on the earlier date. The date of hearing as well as the date of inspection of the documents will be conveyed by the respondent no.2 to the petitioner well in advance. rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(M.R.Shah, J)
jitu